

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

16-C-0774

United States District Court		District <u>Eastern District of Wisconsin</u>
Name of Movant <u>Jeffrey W. Feldman</u>	Prisoner No. <u>12551-089</u>	Case No. <u>13-LR-155</u>
Place of Confinement <u>Federal Correctional Complex (LOW)</u> <u>PO Box 9000 LOW</u> <u>Forrest City, AR 72336</u>		
UNITED STATES OF AMERICA		v. <u>Jeffrey Feldman</u> (name under which convicted)

MOTION

1. Name and location of court which entered the judgment of conviction under attack

United States District Court
Eastern District of Wisconsin
Milwaukee, WI

2. Date of judgment of conviction August 14, 2015

3. Length of sentence 120 months

4. Nature of offense involved (all counts)

Receipt of child pornography

5. What was your plea? (Check one)

- (a) Not guilty ☐
(b) Guilty ☒
(c) Nolo contendere ☐

2016 JUN 22 P 12:06
JON W. SAFFILIPPO
CLERK

CLERK
JUN 22 2016

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

Counts 1 and 3-6 were dismissed as part of a plea agreement.

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☐
(b) Judge only ☐

7. Did you testify at the trial?

Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Name of court

(b) Result

(c) Date of result

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court

(2) Nature of proceeding

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result

(6) Date of result

(b) As to any second petition, application or motion give the same information:

(1) Name of court

(2) Name of proceeding

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result

(6) Date of result

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
(2) Second petition, etc.	Yes <input type="checkbox"/>	No <input type="checkbox"/>

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: The sentence violates Feldman's rights. The release conditions are broad, vague and impinge on Feldman's constitutional rights. The sentence length is an unwarranted sentence disparity.

Supporting FACTS (state *briefly* without citing cases or law):

See the memorandum in support of this 2255.

B. Ground two: The facts before the judge were misleading or wrong.

Supporting FACTS (state *briefly* without citing cases or law):

See the memorandum in support of this 2255.

C. Ground three: The defense counsel was ineffective.

Supporting FACTS (state *briefly* without citing cases or law):

See the memorandum in support of this 2255.

D. Ground four: There was prosecutorial misconduct and vindictiveness. This violates Feldman's due process rights.

Supporting FACTS (state briefly without citing cases or law):

See the memorandum in support of this 2255.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

None of the grounds have been previously presented due to ineffective defense counsel and I gave up my right to appeal as part of my plea agreement.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Robin Shellow
324 W. Vine St.
Milwaukee, WI 53212

(b) At arraignment and plea Robin Shellow

(c) At trial N/A

(d) At sentencing Robin Shellow
Christopher Donovan
757 N. Broadway, #401
Milwaukee, WI 53202

(e) On appeal N/A

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) Give date and length of the above sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

3/11/2016
Date

Jeffrey M. Feldman
Signature of Movant